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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,649	10/11/2001	James R. Edgar	87801-9015-00	8597

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/975,649

Applicant(s)
Edgar

Examiner
Estremsky

Art Unit
3677



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-113 is/are pending in the application.
- 4a) Of the above, claim(s) 9, 25, 37-55, 62, 63, 79, 91, 96, and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-24, 26-36, 56-61, 64-78, 80-90, 92-95, 97-103, and 105-113 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2,3 6) ☐ Other:

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DETAILED ACTION

Remarks

1. Applicant's election with traverse of the invention of Group I in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the inventions are sufficiently similar to allow concurrent examination and that some of the claims are generic. This is not found persuasive because the Application contains claims that are drawn exclusively to distinct devices or embodiments. Since the claims define 'the invention', the Application is assumed to contain claims drawn to patentably distinct inventions, i.e. multiple inventions. Should Applicant provide evidence that the inventions are 'obvious' variants within the context of 35 USC 103, i.e. the inventions are not patentably distinct, those arguments would be made of record and considered.

Regardless of the requirement for election of species, Applicant should note that generic claims will be examined and if found allowable, dependent claims drawn to other than the elected invention can be considered and/or rejoined. Therefore, assuming the invention (as set forth in generic claims) is broader than a single embodiment, no hardship is placed on Applicant, other than careful drafting of the claims. Applicant should note that it is required that Applicant indicate which embodiment(s) of the invention any added claims are readable.

For this reason, it is important that Applicant be aware of generic and embodiment-specific subject matter of the claims. With respect to generic and embodiment-specific claims, it is noted that several claims that were not elected, might reasonably be construed to read on the

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elected embodiment and that other elected claims do not appear to be readable on the elected embodiment. The examiner has endeavored to examine all claims that are readable on the elected embodiment of the invention.

The requirement is still deemed proper and is therefore made FINAL.

2. Consequent to fuller consideration, the examiner has noted that there are non-elected claims that might reasonably be construed as being either drawn to, or generic to the elected embodiment. Those claims have been examined hereinbelow in addition to claims elected by Applicant. Additionally however, some of the claims indicated by Applicant as reading on the invention include features that are contrary and/or inconsistent with the written description of the elected embodiment.

Claims 9, 25, 37-55, 62, 63, 79, 91, 96, and 104 include limitations that are inconsistent and/or directly contrary to features of the elected embodiment and are apparently drawn to a non-elected embodiment of the invention. It is the examiner's position that the disclosure does not provide adequate support to allow clear or proper interpretation of these claims as regards the elected embodiment. Inasmuch as the claims are apparently drawn to a non-elected embodiment, they have been withdrawn from further consideration rather than rejected under 35 USC 112, first or second paragraph.

Accordingly claims 1-8, 10-24, 26-36, 56-61, 64-78, 80-90, 92-95, 97-103, and 105-113 are currently pending and examined hereinbelow.

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Information Disclosure Statement

3. The information disclosure statements filed 3/1/02 and 7/8/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

a. Claim 12 - "the lever is directly coupled to the rotatable element".

b. Claim 51 - no spring or other structure is illustrated for providing capability of "a first stable state of the over-center device to a second stable state of the over-center device during movement of the lever to the locked position". Similarly, claim 109 for example further requires illustration of some structure corresponding to limitation of "biased".

Claim 94 for example includes "at least one stop" that is not illustrated.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

As regards the claimed invention and objections to the drawings made below and/or rejections made under 35 USC 112, first and/or second paragraph: wherever a claim explicitly sets forth an element as part of the arrangement thought to be the invention, it is assumed that Applicant is relying upon that element, at least within context of the claim, to patentably define from the prior art. The examiner acknowledges that a 'spring' or 'electromagnet' are not new structures and that Applicant does not have to illustrate what is old and well known in the art, but since the claims define what it is that Applicant believes to be 'new' and desires exclusive rights to, it is required that Applicant illustrate the elements of the claimed invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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As regards limitation of “is translatable to the two different positions” and “is rotatable to the two different positions” (claims 6, 7, 40 for example), as disclosed, the elected embodiment is only capable of movement through an integral combination of translation and rotation. As regards scope of the invention, these more exclusive limitations are distinguished from limitations that ‘include’ translating or rotating movement.

As regards limitation of “camming” (claim 15, 92, 97, 105, 112 for example), as best understood, the elected embodiment does not have a cam surface capable of “camming” as now claimed. Similar consideration seems to apply to “ride upon a surface” limitation.

As regards limitation of “releasing the pawl from engagement with the ratchet by transferring motive force from the lever to the pawl” (claim 17-19, 31, 39, 100 for example), as best understood, the lever is used to move the device from lock to unlock condition and input lever(s) are used to unlatch.

As regards limitation of “lost-motion connection” (claim 59, 75 for example), as best understood, the claimed connections have not been illustrated and described as having “lost-motion”. It is not clear how to make and use the claimed invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-4, 6, 7, 12, 15, 17-19, 31, 39, 51, 59, 65, 66, 72, 75, 81, 87, 97, 100, 105, 112

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failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claims 2-4, 65, 66, and 72 the examiner recognizes that a working embodiment of the invention has been disclosed but the scope of present claims appears to be outside or beyond the scope of the disclosure as regards operation in other positions etc. It has been assumed that Applicant intends the limitations to be interpreted as any position along a continuum of 'positions' between the described end positions, but clarification and/or amendment is required.

As regards claims 6 and 7 for example, the scope of the claims requires only 'translation' and 'rotation' respectively. As best understood, the term --including-- should be inserted since the elected embodiment of the invention must be moved using a combination of translatory and pivotal movement.

As regards claim 12, for example, it is not clear which disclosed structure corresponds with limitation of "lever". For example, "the lever" of claim 1 is assumed to be enabled by part 12 of the disclosure since it was disclosed to perform the recited function. However, in claim 12, only part 50 has been disclosed to be "directly coupled to the rotatable element" and it is not clear what is covered by the claimed invention.

As regards limitation of "camming" (claim 15, 97, 105, 112 for example), it is not clear if or how this limitation reads on the elected embodiment of the invention.

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not clear after reading the written description of the elected embodiment what the scope of the claim should include.

As regards limitation of “lost-motion connection” (claim 59, 75 for example), it is not clear after reading the written description of the elected embodiment what the scope of the claim should include.

As regards limitation of “stable positions” (claims 51, 81, 87 for example), as best understood, additional elements are required to create a stable position such as a spring(s) but none is claimed and the limitation is not in accordance with 35 USC 112, 6th paragraph. See MPEP 2181-2185 and MPEP 2114. No structure is claimed that could include this capability and accordingly, the claimed invention seems to be missing elements. It is not clear what the claimed invention includes or excludes. The specification attempts to define stable positions as possibly not requiring any additional structure but this description is not clear or consistent with art-accepted terminology of the terms ‘stable position’ and ‘over-center’. In that respect, the definition in the current specification confuses the meaning of the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use

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10. As best understood, claims 1-5, 7, 8, 10, 12-15, 56-59, 61, 64-78, and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,277,461 to Dzurko.

Dzurko '461 teaches Applicant's claim limitations including : a "ratchet" - 30, a "pawl" - 32, a "lever movable to two different positions with respect to the pawl" - 34, "the lever having a pivot point,...substantially the same location with respect to the lever in both of the two different positions" - 36.

It should be noted that locking/unlocking positions of part 34 are pivotal with respect to part 36 and that pushing part 48 down for unlatching also causes some amount of rotation of part 34 about 36.

As regards claims including 2 and 3, assuming the "additional positions" limitation is intended to cover any position of the continuum of positions between end positions, the examiner points out that lever 34 will be effectively unlocked and capable of opening the pawl just prior to reaching the end position described as an 'unlocked position'.

As regards claim 8, lever 34 is inherently capable of pivotally moving between locked/unlocked positions during an essentially translatory unlatching movement whereby the

lever 34 is capable of moving "by a combination of rotation and translation of the lever" as

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As regards claim 58; part 56 reads on limitation of “rotatable member is a first rotatable member” and part 40 reads on limitation of “second rotatable member”.

As regards claim 74; part 56 reads on limitation of “rotatable member” and part 40 reads on limitation of “second rotatable member”.

11. As best understood, claims 1-8, 10, 12-14, 16-24, 26-36, 56-61, 65-78, 80-88, 90, 93-95, 97-103, 105-111, and 113 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,126,212 to Fujihara.

Fujihara ‘212 teaches Applicant’s claim limitations including : a “ratchet” - 3, a “pawl” - 4, a “lever movable to two different positions with respect to the pawl” - 16, “the lever having a pivot point,...,substantially the same location with respect to the lever in both of the two different positions” - at 17.

As regards claims including 2 and 3, assuming the “additional positions” limitation is intended to cover any position of the continuum of positions between end positions, the examiner points out that lever 16 will be effectively unlocked and capable of opening the pawl just prior to reaching the end position described as an ‘unlocked position’.

As regards claim 10, part 18 reads on limitation of “rotatable element”.

As regards claim 13, part 16A reads on limitation of “link”.

As regards claim 16, parts including over-center spring 20 teach broad limitation for an

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As regards claim 35, part 19 reads on broad limitation for “actuator”.

As regards claims 58, 74, part 16A reads on limitation of “first rotatable member” and part 16B reads on limitation of “second rotatable member”.

As regards claim 85; part 18 reads on “first element” and part 20 reads on “second element”.

As regards claim 94, part 18 is inherently provided with stops (not shown) to limit its travel to include the disclosed positions.

Allowable Subject Matter

12. Claim 11 and 89, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. U.S. Pat. No. 5,802,894 to Jahrsetz.
- b. U.S. Pat. No. 5,803,515 to Arabia.
- c. U.S. Pat. No. 5,921,595 to Brackmann.
- d. U.S. Pat. No. 5,961,163 to Brackmann.

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- e. U.S. Pat. No. 5,971,449 to Rogers.
- f. U.S. Pat. No. 6,286,878 to Hochart.
- g. U.S. Pat. No. 6,390,516 to Kobayashi.
- h. U.S. Pat. No. 6,485,071 to Schwaiger.

14. Submission of any response by facsimile transmission is encouraged. Group 3677's relevant facsimile numbers are :

- 703-872-9326, for formal communications for entry **before Final** action: or
- 703-872-9327, for formal communications for entry **after Final** action.

Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly within our examining group and will eliminate Post Office processing and delivery time and will bypass the PTO's mail room processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a Deposit Account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) ____ - ____) on _____
(Date)

Typed or printed name of person signing this certificate:

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(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is (703) 308 - 0494. The examiner can normally be reached on M - Th from 730 am to 600 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann, can be reached on (703) 306-4115.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

- Technology Center 3600 Customer Service is available at 703-308-1113.

- General Customer Service numbers are at 800-786-9199 or 703-308-9000.

GWE

March 10, 2003



GARY ESTREMSKY
PRIMARY EXAMINER